IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5899 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any OrJJJJ

JJJJJ

Being aggrieved by an order dated 4.8.90 passed by the Deputy Collector (Land Planning No. 8, Rajpipla), respondent No. 1 herein, and an observation made by the Addl. Chief Secretary (Appeals), Revenue Department, Govt. of Gujarat in his order dated 26.3.90, the petitioners have approached this court with a prayer that the order dated 4.8.90 be quashed and the observation made in order dated 26.3.90 passed by the Addl. Chief Secretary (Appeals), Revenue Department, to the effect that the land in question should be returned by the petitioners to respondent No. 2 be quashed.

2. The facts leading to the present petition are as under:-

3. In February 1976 the petitioners had purchased occupancy rights in respect of land bearing Block No. 313 of Village Boridra, Taluka Jaghadia, Dist. Bharuch from respondent No. 2. After purchase of the occupancy rights in respect of the land in question, the land was made non-agricultural and for doing the said formality, respondent No.2 had extended his co-operation to the petitioners. Thereafter, the petitioners had put up residential houses on the land in question and the petitioners are in occupation of the said premises as well as the land in question.

3. In 1987, respondent No. 2 made a grievance before respondent No. 1-Deputy Collector (Land Planning No. 8) that by virtue of transfer of occupancy rights in respect of the land in question, the provisions of sec. 73AA of the Bombay Land Revenue Code, 1879 (hereinafter referred to as 'the Code') had been violated and, therefore, appropriate action should be taken by respondent No. 1. It was submitted by respondent No. 2 that by virtue of the provisions of sec. 73AA, occupancy rights of respondent No. 2 could not have been transferred to the petitioners because respondent No. 2 was a tribal and the land in question was covered under the provisions of sec. 73AA of the Code. In the circumstances, it was prayed by respondent No. 2 that, as per provisions of the Code, the petitioners should be evicted from the land in question and possession of the land in question should be given to respondent No. 2. After hearing the concerned parties, respondent No. 1 came to the conclusion that for valuable consideration, respondent No. 2 had transferred his occupancy rights in respect of the land in question in favour of the petitioners, and, as the said transfer was in violation

of the provisions of sec. 73A of the Code, the petitioners should be dispossessed of the land in question and respondent No. 2 should be put in possession of the land in question. Moreover, it was also ordered that two buildings which were constructed by the petitioners on the land in question should also be demolished.

4. Being aggrieved by the order passed by respondent No. 2 dated 31st May 1988, the petitioners had filed an appeal before the Collector, Bharuch. By an order dated 14.3.89, the Collector, Bharuch, upheld the order of the Deputy Collector (Land Planning No. 8) dated 31.5.88.

5. Being aggrieved by the order passed by the Collector, Bharuch, the present petitioners filed a revision application before the State of Gujarat. It was submitted on behalf of the petitioners before the State of Gujarat that neither provisions of sec. 73A nor the provisions of sec. 73AA were applicable to their case for the reason that sec. 73AA had come into operation in 1980 whereas the occupancy rights in respect of the land in question were transferred to the petitioners by respondent No. 2 on 16.2.1976. As the provisions of sec. 73AA of the Code did not operate with retrospective effect, the provisions of sec. 73AA could not have been applied in respect of the land in question.

6. The second argument which was advanced by the present petitioners before the revisional authority was that even the provisions of sec. 73A of the Code were not applicable to the land in question for the reason that the lands at Jaghadia Taluka, where the land in question is situated, had already been surveyed in the past and, therefore, the provisions of sec. 73A were not applicable to the land in question. The petitioners had relied upon a judgment dated 2.2.78 delivered by this court in Special Civil Application No. 1191/78.

7. The arguments advanced by the petitioners, which have been narrated hereinabove, were found to be absolutely just and proper by the revisional authority and, therefore, the revisional authority had quashed the orders dated 31.5.88 and 14.3.89 passed by the Deputy Collector (Land Planning No. 8) and the Collector, Bharuch, respectively. Thus, the revision application filed under the provisions of sec. 211 of the Code was allowed.

8. In spite of the fact that the revision application was allowed and the orders dated 31.5.88 and

14.3.89 passed by the Deputy Collector (Land Planning No. 8) and the Collector, Bharuch, were quashed and set aside, the revisional authority made an observation in the order that the petitioners should return the land in question to respondent No. 2 and, perhaps, the said observation was made in pursuance of some persuasion made to the petitioners.

9. The petitioners, upon perusal of the order passed by the revisional authority, were rightly of the view that they had succeeded before the revisional authority, but, they were surprised to receive notice dated 27.7.90 (Annexure-D) from the Deputy Collector (Land Planning No. 8) whereby they were asked to hand over possession of the land in question to respondent No. 2. Ultimately, by the impugned order dated 4.8.90 (Annexure-F), respondent No. 1 has directed the petitioners to hand over possession of the land in question to respondent No. 2, though the petitioners had succeeded before the revisional authority.

10. I have heard learned advocate Mr. Akil Qureshi appearing for the petitioners, learned advocate Shri Haresh Trivedi for respondent No. 2 and learned AGP Shri Sudhansu Patel for respondent No. 1.

11. It has been submitted by learned advocate Shri Qureshi appearing for the petitioners that it was absolutely unjust and illegal on the part of respondent No. 1 to issue the notice dated 27.7.90 to the petitioners calling upon them to hand over possession of the land in question to respondent No. 2. He has drawn my attention to the impugned order and especially to the observation made in the said order that order dated 31.5.88 which was passed by respondent No. 1, whereby the land in question was directed to be handed over to respondent No. 2, had already been quashed by the revisional authority by his order dated 26.3.90. It has been submitted by learned advocate Shri Qureshi that as the order of the Deputy Collector (Land Planning No. 8) had already been quashed, it was not open to respondent No. 1 to rely upon the said order and direct the petitioners to hand over possession of the land in question to respondent No. 2.

12. It has been further submitted by him that it was not open to the revisional authority to persuade the petitioners to hand over possession of the land in question to respondent No. 2 though the revisional authority had come to a conclusion that there was no breach of sec. 73A or sec. 73AA of the Code. It has

been further submitted by him that there was no agreement or compromise between the petitioners on the one hand and respondent No. 2 on the other with regard to handing over of possession of the land in question and as there was no compromise between the parties, the revisional authority could not have given any direction to the petitioners or could not have made any suggestion to the petitioners for returning the land in question to respondent No. 2. He has therefore submitted that the order dated 4.8.90 passed by respondent No. 1 should be quashed and the observations made by the revisional authority in order dated 26.3.90 with regard to persuading the petitioners to hand over possession of the land in question to respondent No. 2 should also be quashed.

13. Learned Advocate Shri Trivedi appearing for respondent No. 2 has submitted that the revisional authority ought not to have disturbed the concurrent findings arrived at by the Deputy Collector (Land Planning No. 8) and the Collector, Bharuch, whereby it was held that the provisions of sec. 73AA had been violated and, therefore, respondent No. 2 had a right to get possession of the land in question.

14. Similar argument was advanced by learned AGP Shri Sudhansu Patel that it was not proper on the part of the revisional authority to quash and set aside the concurrent findings of the Deputy Collector (Land Planning No. 8) and the Collector, Bharuch.

15. I have heard the learned advocates and have also perused the impugned orders.

16. It is not in dispute that there was no compromise between the petitioners and respondent No. 2 with regard to return of the land in question in favour of respondent No. 2. It is also not in dispute that the revisional authority had come to the conclusion that there was no violation of the provisions of sec. 73A or sec. 73AA of the Code when the occupancy rights in respect of the land in question were transferred by respondent No. 2 in favour of the petitioners.

17. In view of the above-referred undisputed facts, in my opinion, it was not proper on the part of the revisional authority to make any suggestion or make any observation persuading the petitioners to return the land in question to respondent No. 2. Once having come to a conclusion that the transfer of occupancy rights in favour of the petitioners by respondent No. 2 is legal

and valid and is not in contravention of the provisions of sec. 73A or sec. 73AA of the Code, the revisional authority could not have made any observation requesting the petitioners to return possession of the land in question. The learned advocates appearing for the respondents could not support the observation referred to hereinabove, which has been made by the revisional authority in favour of respondent No. 2.

18. Arguments advanced by the learned advocates for the respondents are not relevant because the respondents have not challenged the order of the Addl. Chief Secretary (Appeals), Revenue Dept. Having not challenged the order passed by the revisional authority, their submissions about validity of the order passed by the revisional authority cannot be considered at all.

19. In the circumstances, the order dated 4.8.90 (Annexure F to the petition) whereby the petitioners have been directed to hand over possession of the land in question to respondent No. 2 is hereby quashed and set aside. The observation made by the revisional authority in his order dated 26.3.90 with regard to returning the land in question to respondent No. 2 is also not proper and the said observation, especially in view of the fact that there is no understanding between the parties or there is no compromise between the parties with regard to return of the land in question, is absolutely unwarranted and therefore the said observation is also quashed and set aside without affecting the validity of the order dated 26.3.90.

20. Thus, the petition is allowed. Rule is made absolute with no order as to costs.

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